



# Wisconsin Elections Commission

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**DATE:** October 19, 2020

**TO:** Wisconsin County Clerks  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** Meagan Wolfe  
Administrator

**SUBJECT:** Spoiling Absentee Ballot Guidance

Many voters are contacting the Wisconsin Elections Commission regarding spoiling their absentee ballot. Issues include damaged ballots, making an error when voting the ballot (such as filling in the wrong circle or voting for too many candidates), or voters changing their mind after returning their absentee ballots. Absentee voters can request to spoil their absentee ballot and have another ballot issued as long as the appropriate deadline to request the new absentee ballot has not passed. In addition, voters can request to have their returned absentee ballot spoiled and instead vote in person, either during the in-person absentee period or at their polling place on election day, but they must request their ballot be spoiled by the appropriate deadlines. Once that deadline has passed, a returned absentee ballot cannot be changed, and the voter cannot be issued another ballot on Election Day. The spoiling absentee ballot deadlines for the November 3 General Election are:

- For regular absentee voters who spoil their ballot and request a new ballot by mail: October 29, 2020.
- For indefinitely confined by absentee voters who spoil their ballot and request a new ballot by mail: October 30, 2020.
- For all absentee voters who spoil their ballot and request a new ballot in person at the clerk's office or at their in-person absentee voting location: For most municipalities it is October 30, 2020, but may be as late as November 1, 2020, depending on their in-person absentee hours.

## Spoiling Absentee Ballot Deadlines

	<b>Spoils ballot; requests new ballot by mail</b>	<b>Spoils ballot; requests new ballot in person at the clerk's office or in-person absentee location</b>
<b>Regular Voters</b>	October 29	October 30 in most munis, but could be as late as November 1
<b>Indefinitely Confined Voters</b>	October 30	October 30 in most munis, but could be as late as November 1

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator  
Meagan Wolfe

**Exhibit 35**

Please note an absentee voter cannot spoil their returned absentee ballot at their polling place on Election Day. If an absentee ballot has been returned to the clerk, or is in the mail, a voter cannot spoil their returned ballot at the polling place and request a new one. 2011 Wisconsin Act 227 changed the law and that option is no longer permitted. The voter also cannot spoil a returned absentee ballot on Election Day even if that ballot is expected to be rejected due to an error made by the voter on the ballot. Please note that a voter, whether voting by absentee ballot in the clerk's office or by mail, or at the polling place, can receive up to three ballots (the first two are spoiled). This has been the law in Wisconsin for many years.

### **Spoiling an Absentee Ballot**

After a voter has been issued an absentee ballot at the clerk's office or by mail, they can request to spoil that ballot and receive a new one in the event the voter makes a mistake or changes their mind. The voter must request to spoil their ballot in writing (by mail or email) so that the clerk can confirm the request to spoil the ballot is being made by the original requestor of the absentee ballot.

Voters may also go to the clerk's office and make the request for a new ballot in person during the in-person voting hours offered by the municipality. The deadline to request a new absentee ballot is the last day the clerk offers in-person absentee voting. For most clerks that is Friday, October 30, but voters should contact their municipal clerk for scheduled hours.

If the voter returned their ballot by mail, but their ballot has not been received at their polling place by Election Day, the voter cannot spoil their absentee ballot and get a new ballot. It is suggested that voters return their ballot as soon as possible to ensure that it makes it to their polling place on time. The voter can only cancel the returned ballot (whether or not it was received) prior to the spoiling deadlines listed above.

### **Spoiling an Election Day Ballot (NOT Absentee) at the Polling Place**

For voters who make an error while marking their ballot, the voter can request another ballot at their polling place as long as the ballot has not been cast (placed in a ballot box or tabulator). The first ballot must be returned to the election officials and spoiled (torn to make it unusable). Then, the inspectors place the spoiled ballot in the spoiled ballot envelope to be returned to the clerk with other election materials. A notation (2<sup>nd</sup> or 3<sup>rd</sup> ballot) should be made on the Inspectors' Statement (EL-104) and poll list for each additional ballot issued to each voter.

### **Voters Who Have Not Returned their Absentee Ballot**

Please note that voters who have not returned their absentee ballots can vote at their polling place and do not need to "spoil" their absentee ballot. State law only prohibits voters who returned an absentee ballot from receiving and voting a new ballot at the polling place on Election Day. Voters who have not returned the absentee ballot can be issued a new ballot at their polling place on Election Day. It is suggested that those individuals discard their absentee ballot at home, but if they do bring it into the polling place, the voter should rip in half and discard that ballot on their own. Poll workers should not take the unvoted absentee ballot from the voter.

### **Determining if an Absentee Ballot Has Been Returned by a Voter**

Care should be taken in relying only on the poll book to determine whether an absentee ballot has been issued, re-issued or returned. If the poll book is printed prior to receiving a valid request to spoil a ballot, the information will not appear on the poll book. Since the absentee ballot log should be printed only after the completion of absentee voting, the log should be consulted to determine whether a voter's ballot has been returned. If so, the voter may not spoil the ballot and receive another one. (If the voter insists that the log is incorrect, the inspector should attempt to confirm with the municipal clerk whether the ballot was returned or spoiled by the deadline.)

If the absentee ballot log indicates that an absentee ballot has been issued but has not been returned, election inspectors should ask the voter whether they returned (placed their absentee ballot in the mail) or personally delivered the absentee ballot. If the voter says yes, the voter is prohibited from spoiling that ballot on Election Day, even if their ballot has not yet been processed. If the voter says no, they haven't returned their ballot, then they can be issued a ballot and vote at the polling place. See the Election Day Manual for further guidance and a helpful flow chart regarding this process.

### **Absentee Voter Errors or Ballot Damage After the Spoiling Deadline**

If the deadline to spoil and receive a replacement ballot has passed, and a voter has mistakenly filled out or damaged their ballot in their possession, they have two options: 1) Choose not to return their absentee ballot, discard it and vote in person at their polling location, or 2) Make their voter intent/candidate choices clear on their ballot. For example, if they mistakenly voted for two candidates, they could make it clear on the ballot that they meant to only vote for one of those candidates. Intent should be determined by the election officials. These clarifying actions such as crossing a vote out, writing a note next to a contest, or highlighting a certain candidate should all be considered when inspectors are process the absentee ballot and determining voter intent on the ballot.

On Election Day, if a voter needs to correct information on the absentee certificate envelope, they and/or their original witness, depending on what the error is, must appear at the polling place or central count. This would be due to missing voter information, missing voter signature, or missing witness signature. The witness can appear without the voter to add their signature or address. Please note that the clerk should attempt to resolve any missing witness address information prior to Election Day if possible, and this can be done through reliable information (personal knowledge, voter registration information, through a phone call with the voter or witness). The witness does not need to appear to add a missing address.

### **Legal Citations**

Wis. Stat. § 6.80(2)(c) states that "An elector who by accident or mistake, spoils or erroneously prepares a ballot may receive another, by returning the defective ballot, but not to exceed 3 ballots in all." At a polling place, a voter informs the inspector that they have spoiled their ballot and the inspector issues a new one, noting the number of replacement ballots a voters has

requested and received. Absentee voters are afforded the same opportunity to obtain a replacement ballot if their original ballot has been spoiled.

Wis. Stat. § 6.86(5) directs clerks to issue a new ballot to voters who return a damaged or spoiled ballot and specifies that any request for a replacement ballot must be made within the applicable time limits to request an absentee ballot.

Wis. Stat. § 6.86(6) states that “An elector who mails or personally delivers an absentee ballot to the municipal clerk is not permitted to vote in person at the same election on election day.”

Wis. Stat. § 7.50(2) explains the process of determining voter intent.

Please contact the WEC Help Desk at (608) 261-2028 or [elections@wi.gov](mailto:elections@wi.gov) if you have any questions.